IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.Rev.Pet.No. 387 of 2007()

CRA.9/2004 of SESSIONS COURT, PATHANAMTHITTA
CC.224/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

REVN. PETITIONER: APPELLANT/ACCUSED.

OOMMER KUNJU, S/O.SAIDU MUHAMMED KUNJU,
SHEEJA BHAVAN, CHEPPADU (P.O.),
HARIPPAD, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.B.SREEKUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATES.

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1. V.K.ABRAHAM, POWER OF ATTORNEY HOLDER
OF THE MANAGER OF MULAMOOTTIL BANKERS,
PATHANAMTHITTA DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI C.K. SURESH R2
SRI.V.PHILIP MATHEW R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 387 OF 2007

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Dated this the 30th day of January, 2007

O R D E R

In view of the order which I propose to pass in this Criminal Revision Petition, it is not necessary to issue notice to the first respondent. Revision Petition itself is heard and disposed of after hearing the learned counsel for the petitioner and learned Public Prosecutor.

2. Revision petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act by the Judicial First Class Magistrate No.I, Pathanamthitta, in C.C. No.224 of 2002. He was convicted and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.35,000/-. In default of payment of compensation, petitioner was directed to undergo simple imprisonment for three months after exhausting the provisions under Section 421 Cr.P.C. Petitioner filed Criminal appeal No.9 of 2004 before the Sessions Court, Pathanamthitta against the said conviction and sentence. Learned Sessions Judge concurred with

the findings of the Magistrate and dismissed the appeal. Hence this Criminal Revision Petition.

3. First respondent who is the Power of Attorney Holder of the Manager of Mulamoottil Leasing and Hire Purchase Pvt. Ltd. filed a complaint alleging that Rs.35,000/- is due from the petitioner and when that amount was demanded, he issued Exhibit P3 cheque in discharge of that legally recoverable debt. It was also averred that when the cheque was presented for collection, the same was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the Bank. Though notice was issued demanding payment, no amount was paid. Hence the complaint.

4. Learned Magistrate, after trial, found the petitioner guilty of the offence alleged, convicted and sentenced as aforesaid. Criminal appeal filed against the said conviction and sentence was also dismissed. Hence this Criminal Revision Petition.

5. Material on record shows that petitioner availed a loan of Rs.28,000/- from the company for purchasing a vehicle and

agreed to repay an amount of Rs.43,820/- in instalments. Evidence also shows that petitioner repaid only Rs.8,820/- and defaulted payment of the balance instalments. For the balance amount petitioner issued Exhibit P3 cheque. Evidence on record further shows that when the cheque was presented for collection, the same was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the Bank. On receipt of the dishonour memo, notice was issued, but petitioner did not pay the amount. Both the courts had concurrently found that petitioner issued Exhibit P3 cheque for valid consideration and when the same was presented for collection, it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the Bank. It was also found that in spite of notice petitioner did not repay the amount. Finding of the courts that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is correct and does not call for any interference. Conviction and sentence are also legal and perfect. However, considering the facts and circumstances of the case, it is only just

and proper to grant three months' time to the petitioner to appear before the learned Magistrate to receive the substantive sentence and make payment of the compensation awarded. In the result, Criminal Revision Petition is disposed of in the following manner:

Conviction and sentence imposed on the revision petitioner are confirmed. Petitioner is given a period of three months from today to appear before the Magistrate to receive the substantive sentence of imprisonment till rising of the court and make payment of the compensation awarded. In case petitioner fails to comply with the above directions, learned Magistrate can execute the sentence as ordered after the expiry of three months from today.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007